IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

MONDAY, THE 8TH JANUARY 2007 / 18TH PAUSHA 1928

Crl.MC.No. 50 of 2007()

C.P.NO.108/06 OF THE JFCM COURT, KARUNAGAPPALLY.

PETITIONER: 2ND ACCUSED

NALINAKSHI, W/O. SREEDHARAN,
MOHANA VILASAM BUNGLOW, VENGARA MURI,
THODIYAR VILLAGE, KARUNAGAPPALLY TALUK.

BY ADV. SRI.P.B.SAHASRANAMAN

RESPONDENTS: STATE

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1. STATE OF KERALA, REPRESENTED BY
ITS PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

2. THE CIRCLE INSPECTOR OF EXCISE,
EXCISE CIRCLE OFFICE, KARUNAGAPPALLY.

BY P.P. SRI.GIKKU JACOB.

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 08/01/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

CRL.M.C.NO. 50 OF 2007

Dated this the 8th day of January, 2007

ORDER

The petitioner is the 2nd accused in a prosecution, inter alia, under Sec.58 of the Kerala Abkari Act. The crux of the allegations is that the petitioner's son – the 1st accused, was found in possession of, inter alia, 448 litres of spirit in a building. The 1st accused was arrested and investigation continued. Final report has now been filed arraying the petitioner also as 2nd accused. Cognizance has been taken by the committal court. A warrant of arrest has been issued against the petitioner now to procure her presence. The petitioner without and before appearing before the learned Magistrate has rushed to this Court with this petition under Sec.482 of the Cr.P.C. She apprehends that the learned Magistrate may not consider her application for bail on merits, in accordance with law and expeditiously. There is no worthwhile allegation whatsoever against her. The learned Magistrate may be directed to consider the application for bail on merits and pass orders expeditiously.

2. It is for the petitioner to appear before the learned Magistrate and apply for bail. It has often been repeated by the superior courts that the mere fact that the offence is triable by a Court of Session will not absolve the Magistrate/committal court of his duty/obligation to consider the application for bail on merits. Such consideration must certainly be undertaken by the learned Magistrate. The mere fact that the Investigating Officer has chosen to array the petitioner as an accused cannot stand in the way of the learned Magistrate granting bail to the petitioner if there is no worthwhile allegation/material procured against her.

3. In the result, this Crl.M.C. is dismissed; but with the above observations. I may hasten to observe that if the petitioner surrenders before the learned Magistrate and seeks bail after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits and expeditiously – on the date of surrender itself, unless compelling and exceptional reasons are there.

Sd/-

(R. BASANT, JUDGE)

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//true copy// P.S. To Judge